

## CHAPTER 5

*Gender Equality and the 1973 Constitution*

The 1973 Constitution of Pakistan is predicated on a patriarchal view of women's role in Pakistani society but its chapter on fundamental rights provides a number of safeguards to ensure that women are treated equally and to eliminate discrimination on the basis of sex in all spheres of life. Women are entitled to all protections under the constitution but this chapter analyses specific articles on women, how the superior courts interpret and apply them, and whether they meet Koranic and international human rights standards, especially the 1979 Convention on the Elimination of all Forms of Discrimination against Women (hereinafter, the Women's Convention). Pakistan has made a general declaration to the Women's Convention that the accession by Pakistan to the said Convention is subject to the provisions of the country's constitution. This chapter also analyses the justification of this vague and unspecific declaration from the perspective of international law and the constitution of Pakistan.

The constitution contains a long list of fundamental rights applicable equally to men and women but some are designed specifically to protect women's rights. Some women's rights are also recognised as principles of policy. The difference between the fundamental rights and the principles of policy is that the former are justiciable in a court of law whereas the latter are only policy guidelines and no law can be struck down or anyone punished because of their violation (article 30). The constitution recognises almost all human rights guaranteed in the 1948 Universal Declaration of Human Rights, e.g. the right to life and liberty, dignity of person and privacy of home, immunity from torture, freedom of movement and association, freedom of speech and religion and to acquire, hold and dispose of property, access to public places, freedom of assembly, etc. The constitutional provisions of significance to women's rights are the equality clause, the right to employment, human trafficking, political participation, and access to public places, which are discussed below explaining how the superior courts interpret and apply them.

## 5.1 THE EQUALITY CLAUSE: ARTICLE 25

The constitution has devoted a full chapter to fundamental rights, the most important of which is article 25 prohibiting discrimination of any kind against women:

1. All citizens are equal before law and are entitled to equal protection of law.
2. There shall be no discrimination on the basis of sex alone.
3. Nothing in this article shall prevent the State from making any special provision for the protection of women and children.

'In its true spirit, it caters to all the principles of equality' the Commission of Inquiry for Women (1997:4) (hereinafter, the Commission) observed. There is, however, one word in article 25, which is different, namely 'alone' in clause (2). It has the potential for biased interpretation. The Commission (1997:4) expressed its concern that the word 'alone' is unnecessary. It suggests that sex, if coupled with some other factor may provide justification for discrimination and has recommended its removal.

The examination of a few judgments of the superior courts illustrates that this clause is usually interpreted and applied to protect women's rights. The Supreme Court clearly explained the intent and scope of article 25 in the case of *Shirin Munir* (PLD 1990 Supreme Court 295). The brief facts of the case are that girls obtained marks in a pre-medical examination, which would have entitled them to admission into one of the seven medical colleges in the province of Punjab. The total number of seats was 1085. After subtracting reserved seats for different categories, 858 were left for open competition. Out of this, 677 were allocated to boys and 181 to girls. As the girls were competing for a small number of seats so as to get admission, the last girl was required to have secured 820 marks. Among the boys who were competing for a relatively large number of seats, the last boy was required to have secured as low as 731 marks. The girls felt discriminated and petitioned the Lahore High Court, which gave a split judgment. On appeal the Supreme Court held that:

No discrimination on the ground of sex alone can be permitted except on the ground of reasonable and intelligible classification. Such classification in our society for the present permits establishment of educational and professional institutions for the females or exclusively for males. However,